THE SPECIAL NEEDS TRUST SECURE ACT OF 2021

Sponsor - TBD

What's the Problem?

- A change is needed to ensure that the Setting Every Community Up for Retirement Enhancement (SECURE) Act is interpreted to allow a charitable organization to be named as a remainder beneficiary of a trust that is established for a person who has a disability or is chronically ill.

What Does the Law Say?

- The SECURE Act recognizes the critical role that retirement plan accounts play in planning for a loved one with a disability (§401(a)(9)(E)(ii)(III)) or chronic illness (§401(a)(9)(E)(ii)(IV)) by exempting these beneficiaries from the new 10-year distribution rule.
- Recognizing the important role that Special Needs Trusts (SNTs) play in this planning, a retirement plan left to an SNT can be distributed over the lifetime of a beneficiary with a disability or who is chronically ill (IRC §401(a)(9)(H)(iv)).
- The SECURE Act's clear intent is to allow for the retirement benefits to be paid out over the lifetime of these eligible designated beneficiaries, and it should not matter who receives the trust property on the death of the eligible designated beneficiary whether it be an individual, a continuing trust, or a charitable organization.

Reason for the Change

- We want to ensure the remainder beneficiaries (i.e., a trust beneficiary or beneficiaries after the death of the eligible designated beneficiary) of a trust that is established for a disabled or chronically ill individual, whether those remainder beneficiaries are individuals, continuing trusts, or charitable organizations, do not adversely impact the use of the eligible designated beneficiary's life expectancy for minimum required distribution purposes.
- This change will allow families to confidently carry out Congress's intent when planning for their loved ones with disabilities and the charitable organizations that support those individuals.
- There appears to be no Congressional intent to disadvantage individuals with disabilities when their loved ones wish to benefit individuals with disabilities and chronic illness during their lifetimes and the charitable organizations that support them thereafter.

REQUESTED CORRECTION

I.R.C. § 401(a)(9)(H)(iv) Special Rule In Case Of Certain Trusts For Disabled Or Chronically Ill Beneficiaries —

In the case of an applicable multi-beneficiary trust, if under the terms of the trust—

> (I) it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, or

(II) no beneficiary (other than a eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii)) has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust, for purposes of a trust described in subclause (I), clause (ii) shall be applied separately with respect to the portion of the employee's interest that is payable to any eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii); and, for purposes of a trust described in subclause (II), subparagraph (B)(iii) shall apply to the distribution of the employee's interest and any beneficiary who is not such an eligible designated beneficiary shall be treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary.

I.R.C. § 401(a)(9)(H)(v) Applicable Multi-Beneficiary Trust —

For purposes of this subparagraph, the term “applicable multi-beneficiary trust” means a trust—

(I) — which has more than one beneficiary, including a beneficiary who has no right to the employee’s interest in the plan until the death of all eligible designated beneficiaries with respect to the trust,

(II) — all of the lifetime beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to this paragraph and without regard to the remainder beneficiaries of said Trust and without regard to whether those remainder beneficiaries are designated beneficiaries, individuals, charitable organizations or otherwise, and

(III) — at least one of the lifetime beneficiaries of which is an eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii).

For more information please call or write SNA’s Policy Advisor, Brian Lindberg, at brian@consumers.org or 202-789-3606.

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